

1 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
2 WESTERN WASHINGTON REGION  
3 STATE OF WASHINGTON  
4

5 GEORGE LANE, MICHAEL P. SHAW AND  
6 PUGET SOUND SURFACERS, INC.,

7 Petitioners,

8  
9 v.

10 CLALLAM COUNTY,  
11

12 Respondent.  
13

**Case No. 18-2-0006**

**ORDER DENYING MOTION FOR  
RECONSIDERATION AND CLARIFYING  
FINAL DECISION AND ORDER**

14 This matter comes before the Board on Clallam County's (Respondent) Motion for  
15 Reconsideration of the Board's April 8, 2019, Final Decision and Order.<sup>1</sup> The Petitioners  
16 filed a response to the reconsideration motion.<sup>2</sup>  
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19 **I. ANALYSIS AND DISCUSSION**

20 A motion for reconsideration of a final decision of the Board is governed by WAC  
21 242-03-830. WAC 242-03-830(2) provides that a motion for reconsideration shall be based  
22 on at least one of the following grounds:

- 23 (a) Errors of procedure or misinterpretation of fact or law, material to the party  
24 seeking reconsideration; or  
25 (b) Irregularity in the hearing before the board by which such party was  
26 prevented from having a fair hearing.

27 The County asserts that the Board should reconsider its Final Decision and Order  
28 (FDO) in that the Board misinterpreted fact and/or law as to four items included in the FDO:  
29 (1) That the County opted to defer commencing a GMA compliant RCW 36.70A.130 update  
30 process to 2019/2020 (FDO at page 8, lines 20-21), (2) That the record failed to disclose  
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<sup>1</sup> Motion for Reconsideration on Behalf of Respondent Clallam County filed April 18, 2019.

<sup>2</sup> Petitioners' Answer to Respondent's Motion for Reconsideration April 29, 2019.

1 “any early notice” (FDO at page 9, lines 3-4) and that the County did not include a “public  
2 notice” (FDO at page 11, lines 7-8), (3) That Resolution 82 appeared to the Board to be a  
3 “*fait accompli*” at the time of public notice of the public hearing before the Board of County  
4 Commissioners (FDO at page 9, lines 9-11) and finally, (4) The County requests clarification  
5 of the scope of public participation required to achieve compliance.

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7 Having reviewed the County’s reconsideration motion, the Board concludes that none  
8 of the first three bases on which reconsideration is requested were “material to the party  
9 seeking reconsideration [the County]”. WAC 242-03-830(2)(a). That is, if there were any  
10 possible errors of fact or law, they were not material to the outcome.<sup>3</sup> The Board’s Final  
11 Decision and Order concluded that the County violated GMA public participation  
12 requirements and remanded on that basis.<sup>4</sup>

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14 It is apparent that the County’s concerns relate to the scope of its compliance  
15 obligations and arise primarily due to the Board’s failure to clarify that the violations found  
16 relate solely to the RCW 36.70A.131 review. While some of the Issue Statements<sup>5</sup> are  
17 broad enough to encompass a challenge of the County’s entire RCW 36.70A.130 update  
18 process, the argument presented by the Petitioners focused on that portion of the update  
19 process required by RCW 36.70A.131, review of mineral resource lands’ designations and  
20 implementing development regulations. They did not argue a challenge of the entirety of the  
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23 <sup>3</sup> The County contends that the Board stated there was no “public notice” provided in regards to the RCW  
24 36.70A.131 review process. The County is correct that a notice of the Board of County Commissioners public  
25 hearing on the Resolution affirming the completion of the RCW 36.70A.130 review was published, albeit less  
26 than two weeks prior to the adoption hearing. The publication and other dissemination of notices less than two  
27 weeks prior to final consideration of Resolution 82 fell far short of the “early and continuous public  
28 participation” required by RCW 36.70A.140.

29 <sup>4</sup> Counties and cities are required to establish a program that identifies procedures and schedules for the  
30 public to participate in the periodic update. The program must provide for **early and continuous public**  
31 **participation**. The program should clearly identify the scope of the review and identify when legislative action  
32 on the review and update component are proposed to occur. Counties and cities must ensure that **notice** of  
the update process is broadly and effectively disseminated. (Emphasis in original). Department of Commerce,  
Local Government Division, Growth Management Services publication, Keeping Your Comprehensive Plan &  
Development Regulations Current: A Guide to the Periodic Update Process - 8/2016 at 7.

31 <sup>5</sup> Amended Prehearing Order, November 28, 2018, Issues 1 and 2. See also the Petitioners’ Pre-Hearing Brief  
32 at 7: “At its core, this appeal is about the County’s continuing failure to update or provide for evolution of  
mineral resources lands designations in a Comprehensive Plan and implementing development regulations to  
comply with the GMA in 2018 in order to meet the mandate to designate 50 years of construction aggregates  
of commercial significance.”

1 RCW 36.70A.130 review and the Board did not intend to imply or indicate that it found the  
2 RCW 36.70A.130 process violated the GMA.<sup>6</sup>

3 However, the Board agrees that the FDO inadvertently failed to appropriately include  
4 reference to the violation of RCW 36.70A.131. An alleged violation of RCW 36.70A.131 was  
5 the specific focus of the Petition for Review. As stated, the Petitioners did not challenge the  
6 entirety of the RCW 36.70A.130 update process but rather only that portion of the process  
7 related to the mineral resource lands' designation and implementing development  
8 regulations required by RCW 36.70A.131.  
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## 10 II. ORDER

11 The Board amends its Final Decision and Order to provide as follows:

- 12 • At page 12, lines 6-10: The Board finds and concludes in regards to Issues 1 and  
13 2 that the process Clallam County employed in conducting the RCW 36.70A.131  
14 MRL review violated RCW 36.70A.035, RCW 36.70A.140, RCW 36.70A.130,  
15 RCW 36.70A.131 and was not guided by RCW 36.70A.020(11). (underlined  
16 added)  
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- 18 • At page 15, lines 15-19: The Board finds and concludes that the Petitioners have  
19 met their burden of proof to establish that Respondent Clallam County's process  
20 leading to the adoption of Resolution 82 violated RCW 36.70A.035, RCW  
21 36.70A.140, RCW 36.70A.130, RCW 36.70A.131 and was not guided by RCW  
22 36.70A.020(11), all as set forth above. The Board has a firm and definite belief that  
23 a mistake has been made. The RCW 36.70A.131 review public participation  
24 process preceding the adoption of Resolution 82 was clearly erroneous in view of  
25 the entire record before the Board and in light of the goals and requirements of the  
26 Growth Management Act. (underlined added)  
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32 <sup>6</sup> In that the Petitioners did not focus their argument on the entirety of the RCW 36.70A.130 review and update  
process, the Board specifically made, and does not make, any determination as to whether that process was  
GMA compliant.

